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16
17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19 SOUTHERN DIVISION
20

21 Gabriella Oyervides,

22 Plaintiff,

23 vs.

24 Southwest Collection Service, Inc.,

25 Defendant.

Case No.: 8:15-cv-995

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

- 1. THE FAIR DEBT COLLECTION PRACTICES ACT; AND**
- 2. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Gabriella Oyervides (hereafter “Plaintiff”), by undersigned counsel,
2 brings the following complaint against Southwest Collection Service, Inc. (hereafter
3 “Defendant”) and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the Fair Debt
7 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”), and repeated
8 violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788,
9 *et seq.* (“Rosenthal Act”).
10
11

12 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), Cal. Civ.
13 Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
14

15 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
16 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
17 where Defendant transacts business in this district.
18

19 **PARTIES**

20 4. Plaintiff is an adult individual residing in Santa Ana, California, and is a
21 “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
22

23 5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3), and is a
24 “debtor” as defined by Cal. Civ. Code § 1788.2(h).
25

26 6. Defendant is a business entity located in Orange, California, and is a
27 “person” as the term is defined by 47 U.S.C. § 153(39) and Cal Civ. Code §
28 1788.2(g).

1 7. Defendant uses instrumentalities of interstate commerce or the mails in a
2 business the principle purpose of which is the collection of debts and/or regularly
3 collects or attempts to collect debts owed or asserted to be owed to another, and is a
4 “debt collector” as defined by 15 U.S.C. § 1692a(6).
5

6 8. Defendant, in the ordinary course of business, regularly, on behalf of
7 itself or others, engages in the collection of consumer debts, and is a “debt collector”
8 as defined by Cal. Civ. Code § 1788.2(c).
9

10
11 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
12

13 9. Plaintiff is a natural person allegedly obligated to pay a debt asserted to
14 be owed to a creditor other than Defendant.

15 10. Plaintiff’s alleged obligation arises from a transaction in which property,
16 services or money was acquired on credit primarily for personal, family or household
17 purposes, is a “debt” as defined by 15 U.S.C. § 1692a(5), and is a “consumer debt” as
18 defined by Cal. Civ. Code § 1788.2(f).
19

20 11. At all times mentioned herein where Defendant communicated with any
21 person via telephone, such communication was done via Defendant’s agent,
22 representative or employee.
23

24 12. Defendant contacted Plaintiff in an attempt to collect a debt.
25

26 13. In March of 2015, Defendant contacted Plaintiff and failed to state it was
27 calling in an attempt to collect a debt.
28

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15
U.S.C. § 1692, et seq.

16. The FDCPA was passed in order to protect consumers from the use of abusive, deceptive and unfair debt collection practices and in order to eliminate such practices.

18. Defendant engaged in conduct, the natural consequence of which was to harass, oppress, or abuse Plaintiff, in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

20. Defendant represented or implied that Plaintiff had committed a crime, in violation of 15 U.S.C. § 1692e(7).

1 21. Defendant's agent communicated with Plaintiff and failed to disclose that
2 he was a debt collector and/or that he was attempting to collect a debt, in violation of
3
4 15 U.S.C. § 1692e(11).

5 22. The foregoing acts and/or omissions of Defendant constitute numerous
6 and multiple violations of the FDCPA, including every one of the above-cited
7
8 provisions.

9 23. Plaintiff has been harmed and is entitled to damages as a result of
10 Defendant's violations.
11

12
13 **COUNT II**

14 **VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION**
15 **PRACTICES ACT, Cal. Civ. Code § 1788, et seq.**

16 24. Plaintiff incorporates by reference all of the above paragraphs of this
17 complaint as though fully stated herein.
18

19 25. The Rosenthal Act was passed to prohibit debt collectors from engaging
20 in unfair and deceptive acts and practices in the collection of consumer debts.

21 26. Defendant falsely represented that a legal proceeding had been or was
22 about to be instituted unless the alleged consumer debt was paid, in violation of Cal.
23 Civ. Code § 1788.13(j).
24

25 27. Defendant did not comply with the provisions of 15 U.S.C. § 1692, *et*
26 *seq.*, in violation of Cal. Civ. Code § 1788.17.
27
28

28. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);
- C. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- D. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- E. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civ. Code § 1788.30(c);
- F. Punitive damages; and
- G. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: June 22, 2015

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Gabriella Oyervides